

**DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS: 03-0370
FINANCIAL INSTITUTIONS TAX
For the 1997 and 1998 Tax Years**

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ISSUE

I. Statute of Limitations – Financial Institutions Tax.

Authority: IC 6-5.5-1-17(a); IC 6-5.5-2-1(a); IC 6-5.5-6-1; IC 6-8.1-1-1; IC 6-8.1-5-2(a); IC 6-8.1-5-2(e); 45 IAC 15-5-7; 45 IAC 15-5-7(f); 45 IAC 17-2-3(a); 45 IAC 17-3-5; 45 IAC 17-3-5(a); 45 IAC 17-3-5(c); 45 IAC 17-3-5(d).

Taxpayer maintains that the Financial Institutions Tax (FIT) assessment for the years 1997 and 1998 is barred by the three-year statute of limitations.

STATEMENT OF FACTS

Taxpayer is a holding company which directly or indirectly controls financial institution subsidiaries throughout the United States and in foreign countries. The Department of Revenue (Department) conducted an audit review of taxpayer's business records and various tax returns for 1997 and 1998. In an audit report completed May 2003, the Department concluded that taxpayer owed additional FIT. As a result, in July 2003, the taxpayer issued notices of "Proposed Assessment." Taxpayer received the notices, submitted a protest challenging the propriety of the FIT assessment, an administrative hearing was conducted during which taxpayer explained the basis for its protest, and this Letter of Findings results.

DISCUSSION

I. Statute of Limitations – Financial Institutions Tax.

Taxpayer argues that the assessment of additional 1997 and 1998 FIT is barred by the statute of limitations because taxpayer "[did] not have an executed waiver extending the statute of limitations for these years."

The statute of limitations is defined under IC 6-8.1-5-2(a) which states that, "Except as otherwise provided in this section, the department may not issue a proposed assessment under section 1 of this chapter more than three (3) years after the latest of the date the return is filed" IC 6-8.1-5-2(e) defines certain circumstances under which the three-year limitations period is tolled. "If a person files a fraudulent, unsigned, or substantially blank return, or if a person does not file a return, there is no time limit within which the department must issue its proposed assessment." *Id.* See also 45 IAC 15-5-7.

On their face, the proposed assessments are untimely because the audit report was completed in May 2003 and the consequent assessments were issued by the Department in July 2003; both dates are well outside the three-year limitations period for assessing additional 1997 and 1998 taxes pursuant to IC 6-8.1-5-2(a).

The issue is whether one of the exceptions contained within IC 6-8.1-5-2(e) is applicable under taxpayer's own circumstances and that – as a result – the usual three-year limitations period was tolled by virtue of that exception.

Taxpayer is a holding company which owns, controls, and operates a large of number of financial institutions including a number of Indiana based institutions.

Within Indiana, "There is imposed on each taxpayer a franchise tax measured by the taxpayer's adjusted gross income or apportioned income for the privilege of exercising its franchise or the corporate privilege of transacting the business of a financial institution in Indiana." IC 6-5.5-2-1(a). For purposes of determining the FIT liability, a "[t]axpayer" means a corporation that is transacting the business of a financial institution, including any of the following:

- (1) A holding company
- (2) A regulated financial corporation.
- (3) A subsidiary of a holding company or regulated financial corporation.
- (4) Any other corporation organized under the laws of the United States, this state, another taxing jurisdiction, or a foreign government that is carrying on the business of a financial institution." IC 6-5.5-1-17(a).

The term "Financial Institution" is defined at 45 IAC 17-2-3(a) which states as follows:

The "business of a financial institution" means the activities of a holding company, a regulated financial corporation, or a subsidiary of either that each is authorized to perform under federal or state law, including the activities authorized by regulation or order of the Federal Reserve Board for such a subsidiary under Section (4)(C)(8) of the Bank Holding Act of 1956 (12 U.S.C. 1843(c)(8)).

Because taxpayer is a "holding company" it comes within the definition of a "financial institution" as set out in IC 6-5.5-1-17(a) and 45 IAC 17-2-3(a). Therefore, taxpayer was itself required to file 1997 and 1998 FIT returns as a "holding company." It is evident that, upon a fair reading of the statute and regulation, that this particular filing requirement was not met when certain constituent Indiana members of the holding company filed individual FIT returns for that period.

In addition, 45 IAC 17-3-5 requires that members of a "Unitary Group" file a single, combined return for the purposes of determining the unitary group's FIT liability. The regulation states, in relevant part, as follows:

A "unitary business" means business activities or operations that are of mutual benefit, dependent upon, or contributory to one another, individually, or as a group, in transacting the business of a financial institution. Unity of ownership exists when a corporation is a member of a group of two (2) or more entities and more than fifty percent (50%) of the voting stock of each member of the group is directly or indirectly owned by: (1) a

common owner or common owners, either corporate or noncorporate 45 IAC 17-3-5(c).

The regulation further specifies that “A unitary group for purposes of the FIT is composed of those taxpayer members that are engaged in a unitary business transacted wholly or partially within Indiana.” *Id.* Once it has been determined that a unitary group is conducting the business of a financial institution, “A designated taxpayer who is a member of a unitary group shall file a *combined return covering all the operations of the unitary business and including all taxpayer members of the unitary group.*” 45 IAC 17-3-5(a) (*Emphasis added*). “Therefore, if one (1) member of a unitary group is conducting the business of a financial institution in Indiana, then all members of the unitary group engaged in a unitary business must file a combined return, even if some of the members are not transacting business in Indiana.” 45 IAC 17-3-5(d). The language of both the statute and the regulation indicate that the annual filing requirement is mandatory and not merely advisory or suggestive.

Therefore, whether as a holding company or as a unitary group, taxpayer was required to file a FIT combined return in which it reported all the operations of its business including those entities within the state and those without. Taxpayer failed to meet its reporting requirement because it did not file the combined return.

The regulation provides that, “The running of the statute of limitations for purposes of assessing unpaid taxes will not start if the taxpayer fails to file a return which is required under any listed tax provision.” 45 IAC 15-5-7(f). The term “listed tax” is defined at IC 6-8.1-1-1 which specifically includes “financial institutions tax” as one of Indiana’s “listed taxes.” Under that portion of the Indiana Code outlining a taxpayer’s responsibilities under the Financial Institutions Tax, IC 6-5.5-6-1 states that “[a]nnual returns with respect to the tax imposed by this article *shall* be made by every taxpayer: (1) having for the taxable year adjusted gross income or apportioned income subject to taxation under this article” (*Emphasis added*). The filing requirement is repeated at 45 IAC 17-3-5(a) which states, “A designated taxpayer who is a member of a unitary group *shall* file a combined return covering all the operations of a unitary business and including all taxpayer members of the unitary group.” (*Emphasis added*).

Taxpayer – as a holding company – failed to file the necessary combined 1997 and 1998 returns covering all the operation of its unitary group. Therefore, under IC 6-8.1-5-2(e), the three-year statute of limitations did not begin to run and does not now preclude the Department from an assessment of taxes for those two reporting periods.

FINDING

Taxpayer’s protest is respectfully denied.